



OFFICE OF PUBLIC INSTRUCTION

PO BOX 202501
HELENA MT 59620-2501
www.opi.mt.gov
(406) 444-3095
(888) 231-9393
(406) 444-0169 (TTY)

Linda McCulloch
Superintendent

February 12, 2008

(Parents)

(Superintendent)

(District Attorney)

THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION

RE: **FINAL REPORT** – In the Matter of ****, 2007-02, alleged violations of the Individuals with Disabilities in Education Act (IDEA)

Dear (Parents) and Superintendent ****,

This is the Final Report pertaining to the above-referenced special education complaint ("Complaint") compiled and submitted pursuant to Admin. R. Mont. 10.16.3662. ("Complainants"), parents of **** allege in the Complaint that the **** School District ("District") failed to provide Complainants' child, **** ("Student"), with a free appropriate public education ("FAPE") under the Individuals with Disabilities in Education Act ("IDEA") and Montana special education laws.

The Complainants allege the District acted in violation of and denied the services required in Student's Individualized Education Program ("IEP") and/or other applicable laws and regulations. The Complaint generally alleges the District violated the IDEA, corresponding Montana law, and the provisions of Student's IEP in the following ways:

- 1) failure to properly communicate and coordinate Student's particular transportation needs to the independently contracted bus company, resulting in an aggressive incident by Student on September 5, 2007, after which Teacher suggested the bus driver file criminal charges against Student;
- 2) failure to properly implement the IEP's Aversive Treatment Plan on September 14, 2007, thereby compromising the safety of Student and staff;
- 3) refusal to provide Student's medications to him at school after October 2, 2007;
- 4) failure to provide Student with a particular keyboard and program and failure to inform Complainants of the status of the attempted procurement after numerous inquiries by Complainants;
- 5) failure to provide a qualified special education teacher adequately versed in autism;
- 6) failure to provide adequate or appropriate IEP goals in Student's best interests and

"It is the mission of the Office of Public Instruction to improve teaching and learning through communication, collaboration, advocacy, and accountability to those we serve."

- violation of the IEP by moving Student from a familiar classroom to a different special education room, which adversely impacted his ability to adjust to sixth grade; and
- 7) failure to adequately communicate with Complainants and failure to allow them free access to Student's classroom to check on his progress.

Procedural History

1. The Complaint. On December 12, 2007, the Montana Office of Public Instruction ("OPI") received a Complaint signed by Complainants dated December 4, 2007. I notified the District of the filing by letter dated December 17, 2007.
2. Early Assistance Program. The OPI's Early Assistance Program attempted to resolve the controversy pursuant to Admin. R. Mont. 10.16.3660. The director of the Early Assistance Program concluded resolution was not possible.
3. District's Written Response. On December 21, 2007, I was notified the parties had not agreed to attempt resolution through the Early Assistance Program and, therefore, the District needed to prepare a Response to the Complaint. The District requested and was granted an extension of time in which to file a Response and did so on January 14, 2008. As the District did not serve Complainants with the District's Response, this Office requested appropriate service be made and the District accomplished such service.
4. Complainants' Reply. Pursuant to Admin. R. Mont. 10.16.3662(7), Complainants filed a timely Reply to the District's Response, with separate supplements on January 24, 2008, and January 25, 2008.
5. District "Supplemental Reply." While not specifically provided for by regulation, the District was permitted to supplement its Response to the Complaint with additional information responsive to the Complainants' Reply.

The findings and conclusions contained in this Final Report are based on the Complaint, the District's Written Response, the Complainants' Reply and supplements, the District's supplements, and telephone interviews with the following individuals: the **** School District Special Education Director (Director), the Special Education Teacher (Teacher), the Registered Occupational Therapist (OT), two Special Education Aides (Aide A and Aide B), and Student's mother.

Federal and state laws require all relevant information to be reviewed and an independent determination made as to whether the District violated IDEA, 34 CFR 300.661(a)(3), and Admin. R. Mont. 10.16.3662(8). As part of the investigation, I appointed a staff investigator to review documents and materials and interview the parties.

B. Legal Framework and Procedural Decisions.

Federal and state law requires that students with disabilities receive FAPE. 20 U.S.C. §§1400-1487; Mont Code Ann. § 20-7-401 et seq. In general, FAPE means special education and related services that conform to the student's individualized education program. Special education, in turn, means specifically designed instruction, at no cost to the parent, to meet the unique needs of the disabled child. The United States Supreme Court has interpreted IDEA to mean that "basic floor of opportunity" provided by the Act consists of access to specialized instruction and related services which are individually designated to provide educational benefit to the handicapped child. *Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, 458 U.S. 176, 202 (1982).

The District raises several objections to the complaint investigation procedure which are addressed as follows:

1. The District asks this Officer to dismiss the Complaint because Complainants failed to properly allege a violation of IDEA or Montana law as required by Admin. R. Mont. 10.16.3662(2). *District Response filed Jan. 14, 2008*. Upon review of the Complaint with its accompanying documentation, I conclude Complainants have set forth allegations with sufficient specificity to meet the requirements of Admin. R. Mont. 10.16.3662(2). Further, the District had sufficient information to respond to each of the Complainants' allegations in its initial Response, and further supplemented its response to this Office by submitting a "Reply to the Materials provided by [Complainant] on 1/23/08 and 1/24/08." This objection is therefore DENIED.
2. The District also asserts "the only information to be viewed as part of any investigation or part of the Complaint... filed by the Complainants is the written information and documentation provided" and the "District objects to any ex parte contact." *P. 2 ¶ II, District Feb. 1, 2008 Reply to Materials Provided by [Complainant] on 1/23/08 and 1/24/08*. Admin. R. Mont. 10.16.3662(6) provides the Compliance Officer shall begin an appropriate investigation once the Complaint and Response are received, and explicitly permits a complainant to respond orally or in writing to the District's Response. I followed the directives of Admin. R. Mont. 10.16.3662 with respect to ex parte contacts. To assist in this matter, I appointed an investigator to gather relevant information and documents regarding the allegations in the Complaint. The investigator conducted interviews with Student's mother and with school district personnel at which the District's counsel was present without objection. The investigator gathered additional relevant documents which were made available to both parties. These procedures ensured an appropriate investigation was conducted under Admin. R. Mont. 10.16.3662. The District's objection is therefore DENIED.
3. The District further argues that Complainants, by voluntarily withdrawing Student from school on October 17, 2007, waived their right to proceed under IDEA and the Complaint should therefore be dismissed. The Complainants' withdrawal of Student after the complained-of events, because Student was a qualified student in a special education program of the District, does not deny Complainants and Student the right to access the procedural safeguards under IDEA or Montana's special education laws. Admin. R. Mont. 10.16.3122; Mont. Code Ann. §20-7-414 (2007). The District's objection on this

issue is therefore DENIED. I would note, however, while no limitation of procedural due process is implicated by Complainants' withdrawal of Student from school, the student's right to access FAPE is dependent upon enrollment in school.

4. The District requested that a letter submitted by Complainant from a prior school psychologist be stricken. The parties are entitled to submit documentation which each believes will assist the Compliance Officer to analyze the facts and circumstances surrounding the Complaint. Admin. R. Mont. 10.16.3662. The school psychologist's letter was given only the weight this Officer saw appropriate given the particulars of this Complaint. The request to strike it from the record is DENIED.

C. Findings and Conclusions

1. The student was a twelve-year-old male while enrolled in the special education program in sixth grade at **** Middle School (S.M.S.) in **** School District for the 2007-2008 school year. He is now thirteen years old. He qualified for special education services under the disability category of autism pursuant to Admin. R. Mont. 10.16.3011. He received services from the District from the time he entered school until Complainants removed him from the sixth grade program on October 17, 2007. He is non-verbal and communicates through various vocalizations, gestures, and behaviors. Student requires special education services 100% of the school day to meet his individual needs.
2. The Teacher is the case manager for Student's 2007 IEP. She has worked as a special education teacher at S.M.S. since January, 2004. She became certified in Elementary Education in February, 2003; she was accepted into the OPI Endorsement Project in February, 2005, and completed it in December, 2007. She is in the Masters Program in Special Education with fifteen credits remaining to complete a Masters Degree.
3. Transportation is provided to Student pursuant to his IEP by an independent contractor, Laidlaw, using a Special Needs bus.
4. An IEP dated January 10, 2007, was in effect when Student attended a 2007 summer program. By all reports Student enjoyed the summer program and progressed in his goals. The IEP remained in effect in the fall of 2007 when he entered sixth grade. On October 2, 2007, an IEP meeting was held at the request of Complainants. The meeting was recessed to enable participants to review and gather further information, with no date set to reconvene. As of October 17, 2007, the meeting had not been re-convened. On October 17, Complainants withdrew Student from school and a new IEP was never completed. The District Response includes a copy of a Notice of IEP meeting for October 30, 2007, reportedly sent twice to Complainants. Complainants do not recall receiving this notice. They did not participate in the October 30, 2007, meeting.

5. The Identified Needs in Student's January 10, 2007, IEP include "safety, learning boundaries, don't use too many 'no's', communication skills, social/behavior skills, self-help skills, safety awareness." The IEP Goals address communication (IEP p. 9 of 22), self-help (IEP p. 10 of 22), and social/behavior (IEP p.11 of 22), and call for Student's placement in a self-contained classroom, transportation services, speech and occupational therapy services with assistive technology, a behavior plan to address aggressive "outbursts," and other services. Student also displays self-injurious behaviors such as biting his hand and hitting his face.
6. To address his behavior and aggressive outbursts, the following were completed: a Functional Behavior Assessment (IEP pp. 15-16 of 22), a Behavior Support Plan (IEP p. 17 of 22), and an Aversive Treatment Plan (IEP pp. 18-22 of 22). The Behavior Support Plan identifies the Challenging Behaviors as "biting staff, charging and grabbing staff clothing." The Function of the Behavior and corresponding Replacement Behavior are listed as:

Behavior Function: a reaction to pain (dystonia causing severe cramping)

Replacement Behavior: "deep foot massage may help alleviate cramping"

Behavior Function: to escape over-stimulating environment (Student "does not like it when too many people are in his space")

Replacement Behavior: "limit the number of people in environment; he leads people by the hand to the door"

Behavior Function: To escape or avoid performing a request made by staff (Student "can act aggressively if 'made' to do something he doesn't want to do")

Replacement Behavior: "try re-direction or substitution of item/activity, keep expectations simple, back off and try again later."

7. The Behavior Support Plan describes what staff is to do when the Challenging Behaviors occur:
 - a. Monitor physical and mental states. Keep Student's environment predictable and stress-free (not a lot of people in his room). Student will start to vocalize "siren" noises which often precede an aggressive outburst. Try to redirect to swing, bubbles, food, and high interest items. Music [is] usually calming. Lights out may help. Keep environment under-stimulating. Foot massages may help for dystonia.
 - b. If all efforts to defuse Student's behavior have not been successful (he has not stopped vocalizations and does not appear calm), and staff feel being

bitten is imminent, staff are to clear room and engage isolation time-out procedure, which shall only last 10 minutes or parents will be notified.

- c. When Student is in isolation, two staff members are to keep Student under visual observation for the entire time, one at each doorway. When he is calm, staff will re-enter and proceed as usual.
8. At the beginning of the school year, Complainants provided the school with a prescription bottle of his medication for use at school. The prescription provided for four pills per serving. On September 4, 2007, Student's doctor faxed a letter to the school ordering an increase in the dosage from four to five pills per serving. From the beginning of the school year until October 2, 2007, the School provided Student with the five pills. On October 2, 2007, the S.M.S. principal changed that practice and informed Complainants the school would not administer Student's medication, presumably because the dosage requested by Complainants did not match what was on the prescription bottle. Student's mother came to the school daily to administer the medications until the prescription was refilled and a new bottle with the new dosage was brought in.

D. Allegations and Dispositions

1. September 5, 2007 Bus Incident

Complainants allege the District violated the provisions of the IEP by failing to properly communicate and coordinate Student's particular transportation needs to the independently contracted bus company, Laidlaw, resulting in an incident on September 5, 2007, in which Student hit a passenger and bit and scratched the bus driver and an aide. They allege the District's failure caused a safety risk to all persons on the bus, caused injury to the bus driver, essentially violated their trust by suggesting to the bus driver and aide they could consider filing criminal charges against Student for the incident, and failed to provide truthful information regarding the pictures of the bus driver's injuries until the filing of this complaint.

DISPOSITION: DENIED

The Special Education Director indicates the District was in the process of organizing training for Laidlaw drivers of Special Needs buses at the time of this incident, but had not done so at the time of the incident, which occurred close to the beginning of the school year. A letter to the Complainants from Laidlaw also confirmed this plan. District policy regarding transportation arrangements is that the parents are responsible for contacting the central busing office to arrange it. The District contracts with the bus company to provide Special Needs services. Complainants arranged for Student to be transported to school on the Special Needs bus. At times they would pick him up or drop him off, and they had regular contact with the bus driver to coordinate any changes in the regular bus schedule. The District had not communicated the particulars of Student's

disability to the bus company and requires a release of information to do so. Complainants were not aware they needed to sign a separate release for this.

In this situation, the bus driver was already very familiar with Student as she had been his special education bus driver prior to his entry into sixth grade. While a number of students were on the bus that day, an aide was also on the bus to assist students. After the incident, the bus eventually reached the school. Teacher met Student and the driver at the bus stop. Teacher encouraged the driver to allow pictures of her injuries to be taken. The driver agreed to allow pictures if they were not used against Student. The bus driver also indicated Teacher had urged her to press assault charges against Student. Teacher acknowledged she informed the driver and the aide they had the right to file charges against Student for the incident but denied she “urged” them to do so. She acknowledged the driver was not interested in pressing charges. Teacher indicated she wanted the driver and aide to know their rights because the driver was injured and the aide appeared upset. Complainants were informed of the incident that day and later learned Teacher had informed the driver and aide they could press charges for the incident. According to the Special Education Director, it is the practice of the School Resource Officer to inform the victim of an assault by a student that she has the right to file charges against the student; the Teacher followed this practice.

The District was in the process of arranging for continued training for Special Needs drivers and attendants with Laidlaw. It was early in the school year and the training had not been accomplished. The IEP required transportation to be provided and it was provided by the District. The Special Needs driver was already familiar with Student and responded appropriately to his outburst. The IEP did not call for Student to be transported alone. IEP notes indicate Student enjoyed riding the bus. After another incident where Student refused to exit the bus and bit the vice principal, adjustments were made to Student's transportation plan to individually transport him with a driver and drop him off at another school location.

The confusion as to who had possession of the District's pictures and Laidlaw's pictures of the driver's injuries was sufficiently explained in the District's Response as miscommunication among the staff of the school.

No violation of the IEP is established under these facts and this issue is therefore **DENIED**.

When the district contracts with a provider for services, the provider becomes an agent of the district and permission to share information is no longer required under FERPA. Requiring a release may interfere with the timely sharing of information necessary for the district to fulfill its duty to provide FAPE. In these situations, the district should 1) notify parents of this practice of sharing information and 2) provide training in advance to all contracted personnel on confidentiality and other provisions of the FERPA.

Further, if training of Special Needs drivers and aides has not been accomplished prior to the beginning of a school year, or currently, this should be accomplished promptly.

I suggest, in the special education context, any recommendations under the District's practice of informing the victim of a student assault about the right to file criminal charges may be better left to the bus driver's employer, District administrators, and teacher organizations, rather than a special education student's teacher, since the relationship between the parents of a non-verbal autistic student and his special education teacher could predictably become strained or even broken upon hearing of a teacher's discussion of criminal charges against the student, whether encouraged or merely relayed as information.

2. September 14, 2007 Classroom Incident with the Use of Aversive Treatment

Complainants allege the District failed to properly implement the Aversive Treatment Plan delineated in Student's IEP during an incident in the self-contained classroom in which he became agitated and charged the teacher.

DISPOSITION: AFFIRMED.

Student's 1/10/07 IEP identifies problem behavior which should trigger the use of the Aversive Treatment Procedures under Admin. R. Mont. 10.16.3346. The behavior generally begins escalating with Student making vocal noise (which sounds like a siren in that the pitch goes up and down), biting his own hand, and stimming (a term used to describe how he would flail and move his hands about when agitated) his hand on nearby objects. If it persists, he then can run or charge at a person, grabbing the person's clothing and wrap his hands in it, while simultaneously trying to bite the person. He can also scratch and pinch while biting. The Behavior Plan formulated pursuant to the Aversive Treatment Procedures calls for a specific staff intervention to be followed when these behaviors occur.

The Behavioral Treatment Plan lists the following Functions of the Behavior and corresponding Replacement Behaviors:

Behavior Function: A reaction to pain (dystonia causing severe cramping)

Replacement Behavior: "deep foot massage may help alleviate cramping"

Behavior Function: To escape overstimulating environment (Student "does not like it when too many people are in his space")

Replacement Behavior: "limit the number of people in environment; he leads people by the hand to the door"

Behavior Function: To escape/avoid performing a request made by staff (Student "can act aggressively if 'made' to do something he doesn't want to do.")

Replacement Behavior: "try re-direction or substitution of item/activity, keep expectations simple, back off and try again later"

If Student is agitated, unable to calm down, and continues to escalate, staff and students are to leave the classroom and post one person at each entry way. Student is to remain isolated until he is calm. As soon as Student allows an adult in the room without running towards her with intent to harm, staff shall reenter the room. The time limit for any one instance will be ten minutes and staff will complete various forms and charting.

The Complaint alleges staff did not follow the directives of the Behavior Support Plan on September 14, 2007. As a result, Student was wrongfully isolated in a dark bathroom on a dirty floor where his safety and well-being were unnecessarily compromised.

On September 14, 2007, Student was in his self-contained classroom, following his regular routine, after arriving late to school at 9:33 a.m. His behavior chart indicates that as early as 9:39 a.m. he started biting his hand and stimming. Student was encouraged to get the music icon to be permitted to listen to his music, which he did.

At some point between 10:30 and 11:00 a.m., the OT arrived to work with him. Aide A told her Student was wet and had not complied earlier when prompted to go to the bathroom. The OT took over, indicating she would address this. An OT intern was located near the doorway observing the session, and Aide B was likewise observing and charting Student's behavior on a clipboard.

The OT prompted Student to the bathroom. He got out of the swing and went into the kitchen. He was biting his hand.

In the kitchen, the OT surmised Student wanted to eat and wanted her to serve him. She "played dumb" since she wanted him to respond to her verbal bathroom request. He got his plate out. She played with the plate, which did not make Student happy. He got out his chicken nugget box and poured them all out. She picked some of them up and put them back in the container. He filled his glass with ice and spilled it on his lap. She did not remove the ice. She observed he was becoming increasingly agitated. She guided him to his food at the microwave. He came back and put more ice in his glass and spilled more on his

lap. She did not remove it. He ate some of his meal; during this time they did not converse because of his increasing agitation.

Student began high-pitched vocalizations and continued stimming and biting his hand. The OT turned his music on and shut off the kitchen light. She mirrored his stimming actions in an effort to connect with Student. Student's agitation continued to escalate and he stood up. The OT asked the OT intern to move so Student could not see her. His agitation increased and he continued biting his hand and stimming.

The Behavior Chart indicates at 11:13 a.m. Student was in the kitchen, had a possible leg cramp, and was stimming and loud. Teacher came into the room at this point. She indicated “things had already gone downhill” when she arrived. She massaged his foot to alleviate the leg cramp. Aide B reported the kitchen was “pretty crowded” with all the people in there. Teacher indicated Student’s behavior calmed down after she massaged his foot.

However, the Behavior Chart indicates at 11:16 a.m. Student had very loud vocalizations and Teacher directed him to the bathroom to change his wet clothes. Aide B recorded he hit his face really hard three times. She did not know whether Teacher saw the hitting behavior. She did not communicate these hits to Teacher until after the incident.

Teacher went past the OT intern into the bathroom. Student followed her into the bathroom vocalizing, stimming, and hitting his face. Teacher hurriedly readied his clean clothes out of concern for his volatile state.

The Behavior Chart records at 11:17 a.m. Student was stimming with his hands. He charged at Teacher, biting her on the left arm. Teacher ran out of the bathroom. She reported she quickly moved the curtain on the bathroom door so the aide could see in, brushed her hand over the switch to shut the light out, and closed the door on Student.

Aide B reported she was very upset by the situation, was concerned about Teacher, and kept asking Teacher if she was okay. Teacher went to the intercom in the main classroom and called the Assistant Principal. There is no indication Student was actually being observed in these minutes by Aide B or Teacher after being shut in the bathroom.

At 11:20 a.m. the Behavior Chart indicates the Assistant Principal arrived, and he and Teacher went into the bathroom to check on Student. He was sitting on the floor, still stimming and making loud vocalizations and biting his hand. At 11:26 a.m. the Behavior Chart indicates Student's hand was bleeding from biting himself and Teacher, still focused on his wet clothes, “check[ed] to see if he can be changed. Not yet.” The bathroom door was left open.

At 11:28 a.m. Teacher re-entered the bathroom in an effort to change Student. He cooperated by sitting on the toilet and changing his pants. His shirt was covered in blood and blood was all over his face.

At 11:29 he came out of the bathroom and pulled up his pants. He cooperated with changing out of his bloody shirt. He went to his swing. Complainants were called and Student went home for the day with them.

This incident demonstrates the importance of a Behavior Support Plan for Student. Staff sought to implement some of the features of the plan when they dimmed the kitchen lights, put on his music, and massaged his foot when it appeared to cramp. However, at critical junctures, staff continued to make demands on him which escalated his behavior, rather than de-escalated it, in opposition to what is called for in the Plan.

For example, the OT observed his continued escalating behavior in the kitchen after she prompted him to go to the bathroom. Even as he ate some of his favorite foods, he continued to escalate in response to the OT's actions. The siren vocalizations charted by Aide B at 11:16 a.m. were classic signs identified in Student's Behavior Support Plan indicating an aggressive outburst was predictable, if not imminent.

The Behavior Support Plan calls for re-direction at this critical stage. While dimming the lights and turning on his music may have been appropriate during the initial stages of escalation under the Plan, they were implemented too late to have any useful effect. Further, the number of people in the kitchen area could also have been a factor in his escalation. Unfortunately, the people were belatedly removed after Student had reached the point of an outburst.

Another critical juncture occurred when Teacher arrived. As she recognized, the situation had already deteriorated to the point an outburst was likely. She followed the Behavior Support Plan to massage his foot to alleviate Student's pain and cramping. She properly asked the OT and the OT intern to exit the kitchen.

Accounts vary as to whether Student was calm when prompted by Teacher to go to the bathroom. Complainants indicate wet clothes are not any sort of trigger for agitation for Student. The District response, on the other hand, asserts wet clothes are a trigger for Student. The IEP does not mention wet clothing as a trigger. Rather, it lists bathroom compliance after staff prompting as a self-help goal. ("Upon giving Student one visual/verbal prompt, Student will follow a staff member to the restroom 3 minutes after the initial prompt was given 2 of 4 attempts.") (IEP p. 10 of 22). Teacher indicates she thought Student was "calm enough" to go to the bathroom and change. The Behavior Chart records very loud vocalizations, stimming, and hitting his face.

Directing Student to the bathroom in such a state of agitation appears contrary to the stated Behavior Support Plan. While it may be difficult for staff to tolerate the student's continued wearing of soiled clothing, the behavior plan identifies the safety of the student and staff as a paramount concern over hygiene and the teaching of self-help goals.

Further, given that Student was displaying behaviors known to be precursors to an aggressive outburst, staff action to direct him into the bathroom when, instead, an isolation might predictably need to occur, was counter to the Plan. Directing the student to the bathroom at a time that his behavior was escalating, instead of applying de-escalation procedures called for in the IEP, contributed to the incident in the bathroom. A bathroom setting is not an appropriate isolation setting for an Aversive Treatment Procedure. It was inappropriately used for this purpose in this instance.

The District failed to follow the IEP in this particular respect and the issue is AFFIRMED.

3. **The District's Refusal to Provide Student's Medications to him at School after October 2, 2007**

The Complaint asserts the District violated state and federal law and its own policies when it refused to administer medications to Student after October 2, 2007.

DISPOSITION: AFFIRMED.

District policy and state law provide authority for the school to administer Student's medicine to him during school hours. Admin. R. Mont. 24.159.1616, 34 C.F.R. §300.34(c)(13). At the beginning of the school year, Complainants provided the school with a prescription bottle of his medication for use at school. The prescription provided for four pills per serving. On September 4, 2007, Student's doctor faxed a letter to the school ordering an increase in the dosage from four to five pills per serving.

From the beginning of the school year until October 2, 2007, the School provided Student with the five pills pursuant to policy and his IEP. On October 2, 2007, an IEP meeting called by Complainants questioned some of the District's actions with respect to Student's IEP. On October 2, 2007, the School Principal called Complainants and informed them the school would not dispense Student's medication, presumably because the dosage requested by Complainants did not match what was on the prescription bottle.

Student's mother came to the school daily to dispense the medications until the prescription was refilled and a new bottle with the new dosage was brought in. The District was in possession of the fax from Student's doctor dated September

4, 2007, as well as the information from the mother and the prescription bottle. This mid-stream change of practice appears unwarranted given the documentation in the school's possession. This issue is therefore AFFIRMED.

4. **District's Failure to Provide the Assistive Technology Discussed in the IEP**

Complainants assert the District violated the IEP when it failed to provide the requested keyboard and program to Student and failed to communicate with Complainants as to the status of their actions in this regard.

DISPOSITION: DENIED.

Student's January 10, 2007, IEP called for occupational therapy treatment even as Student moved into sixth grade. The treatment was to include assistive technology. Specifically, Intellikeys and Big Keys Keyboard were to be added to Student's therapy in sixth grade. The OT did work with Student on Big Keys Keyboard during September, 2007. Student's mother urged the District to consider purchasing a program which was successful in his private occupational therapy, "Writing with Symbols." The OT indicated she was exploring the possibility of purchasing these items at the time of the October 2, 2007, IEP meeting. The Special Education Director reported she gave permission to purchase the items and was in the process of submitting a Special Request for their purchase at the time Student was withdrawn from school. She cancelled the request. Student's mother indicates she had asked numerous times about the Big Keys and the new program, and the District did not inform her it was planning to order it. These facts do not establish a violation of the IEP. This issue of the Complaint is therefore DENIED.

5. **Qualifications of the Special Education Teacher to Address the Needs of the Autistic Child**

Complainants question whether the special education teacher is qualified to teach special education to their autistic child.

DISPOSITION: DENIED.

The qualifications of the Teacher are set forth in the Findings of Fact and meet the necessary qualifications. She participated in the OPI Special Education Endorsement Program and became certified at the end of 2007. She has had some specialized training regarding autism and has 15 credits remaining to obtain for a Masters Degree in Special Education. As such, she meets the requirements of state law and no violation exists with respect to her qualifications.

6. **Whether the IEP is Appropriate for Student and Whether the District's Change to a Different Special Education Room in the Fall Made Adjustment Difficult For Student in Violation of the IEP**

Complainants expressed concern to the District that Student was moved from the main classroom where he had been in the summer into another classroom near the kitchen and bathroom. Complainants also complained generally about the appropriateness of the IEP goals but provided no particular specifics beyond the commentary submitted in the Complaint.

DISPOSITION: DENIED.

The information gathered for this investigation on the appropriateness of the room change for Student at the beginning of fall semester indicates Student's progress had evolved to a point where he could work on self-help skills that primarily involved the kitchen and use of the bathroom. In the fall, the District was also serving another student who required the use of the prior space. An administrative decision was made to change the room utilized by Student.

The special education staff took care to ensure his space was set up in the same manner as it had been in the other room for smooth transition. They noted no problems with his transition to this space. In fact, they were able to put one of his favorite items, the swing, in the new space. He also was very familiar with the kitchen and the bathroom as he utilized those areas on a regular basis in his special education program the previous year and summer. I find no violation with regard to this new location.

Complainants participated in the development and signed their acceptance of the January 10, 2007, IEP. A review of the IEP reveals it to be a very comprehensive and detailed plan for addressing Student's educational needs. IEPs are subject to change and modification. Complainants have the right to request changes to the IEP and did so on October 2, 2007.

If Complainants believe the goals are no longer appropriate, it is imperative to relay that information to the IEP team so they may act on it as provided for by law. I find no violation of the IDEA or Montana law with respect to this issue and it is therefore DENIED.

7. **Whether District's Failure to Communicate with Complainants or Allow Complainants Free Access to Student's Classroom to Check on his Progress Denied Student FAPE**

Complainants assert that around the time they raised questions about the various September incidents, they had trouble with District staff returning the mother's calls. When she inquired about being able to drop in to observe Student's

progress unobtrusively through a window, she was told she had to follow school policy and check in at the front desk to get permission from the teacher.

DISPOSITION: DENIED.

Complainants and District kept and exchanged daily logs. The District asserts it had some difficulty with the frequency of Student's mother's calls because she often would call many times a day and monopolize the special education teacher's time when she needed to be teaching. Teacher indicated she did reduce the frequency and duration of her phone calls with Student's mother, as reflected in her phone log. This occurred after approximately the first month of the school year. It is not clear whether the Teacher or anyone else verbalized to the mother a concern with regard to the frequency of the mother's calls.

The school has a safety policy which requires all visitors including parents to check in at the front desk to receive the teacher's permission to visit the classroom. This policy is reasonable in light of the safety concerns of strangers in the school and privacy concerns. However, the school evidently did not see this as an issue when it came to requiring the mother to come to the school and administer her son's medications. While these concerns appear valid, they do not amount to a violation of the IEP or state or federal law and the issue is therefore **DENIED**.

Notably, the many concerns expressed in the Complaint regarding failure to communicate with Complainants, particularly after their son demonstrated an increase in outbursts, had difficulties on the bus, and had been isolated in the bathroom during the September 14, 2007, incident, are not without significance. The District should examine its actions with respect to this family and determine where communications could be improved.

ORDER

Based on the information gathered during the investigation, I conclude and order as follows:

1. The District erred in implementing the IEP provisions with respect to the Behavior Support Plan. As a general rule, a single incident of failing to implement a particular component of an IEP does not constitute failure to provide FAPE. However, because of the particular behavior needs of the Student, the failure of the District to consistently apply established positive behavior intervention strategies as outlined in his IEP can have significant consequences which may compromise the overall benefit of special education. For this Student, it is especially important that the specific positive behavior intervention strategies as outlined in the IEP are implemented with fidelity. It is on this basis that I find in favor of the Complainant.
2. The District erred in its refusal to dispense the Student's medication without adequate reasons or recourse. Schools are required to administer prescribed medications to

students who require them while receiving educational services. The District received documentation from the prescribing authority regarding the needed change in the student's medication. If the District determined additional documentation was necessary, I find no evidence the District made a proactive effort to acquire the documentation. A proactive effort was warranted in this situation.

3. Pursuant to 34 CFR §300.660(b), 34 CFR §300.342, et seq. and Admin. R. Mont. 10.16.3662(9), the District shall make available a free and appropriate public education to this Student as required by the IDEA and Montana law by developing an IEP that meets the Student's behavioral needs, his medication needs, and his communication needs between District and home.
4. The District shall do the following:
 - a. Review the January 10, 2007, IEP and develop an updated IEP for the Student which ensures an adequate and appropriate Aversive Treatment Plan and positive behavioral supports are in place. The plan shall not include the use of the bathroom as an isolation area.
 - b. Ensure all staff who provide any direct service to the Student receive the necessary training to implement the procedures delineated in the IEP.
 - c. Implement the updated IEP upon the Student's re-enrollment in school.
 - d. Include in the IEP a provision that the Student's medications are a related service and to be dispensed by the District as prescribed.
 - e. Monitor communication between District and Complainants to determine if communication issues exist. If lack of communication between District and Complainants continues to interfere with the successful implementation of the IEP, the District is directed to identify a mutually agreeable party to serve as a contact for the Complainants and require the individual to attempt weekly contact with the Complainants.

Upon request of either party, the OPI shall provide a trained professional to facilitate the development of the IEP for the Student.

The District shall contact Complainants no later than Monday, February 25, 2008, to arrange for the scheduling of an IEP meeting. No later than March 7, 2008, the District shall send to the Compliance Officer a letter outlining the status of the Student's special education.

I shall retain jurisdiction over this matter to assist in the implementation of this Order. Failure to implement this Order may subject the District to sanctions provided for in Admin. R. Mont. 10.16.3662(11).

Sincerely,

Kathleen Magone, Compliance Officer
Chief Legal Counsel
Office of Public Instruction